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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/988,335	11/19/2001	Richard L. Pellegrini	106679.01	8588

7590 02/27/2007  
OLIFF & BERRIDGE, PLC  
P.O. Box 19928  
Alexandria, VA 22320

EXAMINER
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BROWN, MICHAEL A

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

09/988,335

Applicant(s)

PELLEGRINI ET AL.

Examiner

Michael Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 24-40, 45, 58, 59 and 63-99 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 24-40, 45, 58-59, and 63-99 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                               | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                      | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 24-25, 34, 40, 58-59, 68-71, 73-77, 83-86, 88-90 and 94-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langley in view Loos, '947 along with Kirschbaum.

Langley discloses in figures 1-5 a disposable eye patch comprising a sheet member 10 and a metallic layer that doesn't overlap a peripheral portion of the sheet (fig. 5). The metallic material is aluminum. However, Langley doesn't disclose the sheet member being sized and to fit entirely with a human eye socket in a lateral dimension of the eye socket and or in a vertical dimension of the eye socket. Loos teaches in figures 1-3 an eye protector that is sized to fit entire within the human eye socket in a lateral dimension (which is one dimension of the eye socket), of the eye socket (col. 2, lines 30-40). Kirschbaum teaches in figures 1-3 a laser shield comprising a sheet 16 and a metallic layer 20 (a metal foil). The laser shield is formed to cover the patient's eye (col. 3, lines 44-48) from a laser beam. The laser shield can be trimmed to size (col. 3, lines 47-48). The metallic layer covers the entire area of the back of the sheet. The peripheral portion of the sheet doesn't overlap any portion of the periphery portion (fig.

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1). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the eye patch disclosed by Langley could be sized to fit entirely with a human eye socket in a lateral dimension of the eye socket as taught by Loos to prevent the pad from being dislodged from the eye socket. Loos teaches two materials wherein one doesn't overlap the other. The metallic layer disclosed by Langley could be made solid as taught by Kirschbaum to prevent any light from passing through the shield versus using the cotton gauze to prevent light from passing through the eye patch. The dimensions recited in the claims are a design choice. The shield as taught by Kirschbaum doesn't have the metallic layer being overlapped by the sheet material. The sheet 16 as taught by Kirschbaum could be substituted for the sheet 10 disclosed by Langley in order to have a flat sheet. The metallic layer 20 as taught by Kirschbaum could be substituted for the metallic layer 12 disclosed by Langley in order to have a metallic layer having a plan-view shape. This plan view shape could be shape to cover the eyeball completely as taught Loos. The shield as taught by Kirschbaum could be trimmed (as taught above) to fit just as the present invention fits the eye socket.

Claims 26-33, 35-39, 45, 50, 63-65, 67, 72, 79-82, 87 and 91-92 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Krupnick, along with Rosenblatt.

Krupnick teaches in figures 1-3 an eye patch comprising a sheet 24 having an adhesive 30 applied over at least the peripheral edge of the sheet. The eye patches are in a strip. Rosenblatt teaches in col. 3, lines 40-42 using a dispenser to hold a plurality of eye patches. It would have been obvious to one having ordinary skill in the art at the

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time that the invention was made that the adhesive as taught by Krupnick could be substituted for what appears to be two adhesive strips disclosed by Langley because either adhesive could be used to hold the eye patch over the socket of the eye. The eye patches could be placed in a dispenser as taught by Rosenblatt in order to keep them clean before use. The sheet and the metallic layer could be made of the same thickness because the dimensions recited in the claims are not critical. The metallic material could be any type of metallic material because the type of metallic material used is not critical. The foam material could be any plastic foam because plastic foams are biocompatible and don't cause any harm to sensitive tissue, such as tissue around the eyeball. The treatment is for light procedure, laser surgery or laser procedure.

Claims 66, 78 and 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims above, and further in view of Wilson.

Wilson discloses in figures 1-4 an eye shield comprising a tab 25. It would have been obvious to one having ordinary skill in the art at the time that the invention was made that the tab as taught by Wilson could be incorporated into the sheet member disclosed by Langley in order to use the tab to remove the eye patch from the eye.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Brown  
February 20, 2007

A handwritten signature in black ink, appearing to read "Michael A. Brown", with a long horizontal flourish extending to the right.

MICHAEL A. BROWN  
PRIMARY EXAMINER